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Contract No. 08SD101633

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Boise Project, Arrowrock Division

CONTRACT BETWEEN THE UNITED STATES OF AMERICA  
AND THE NEW YORK IRRIGATION DISTRICT FOR  
REPAYMENT OF SAFETY OF DAMS COSTS

THIS REPAYMENT CONTRACT, made this 11<sup>th</sup> day of January 2008,  
pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), as amended and supplemented;  
and the Reclamation Safety of Dams Act of 1978 (Public Law 95-578; 43 U.S.C. § 506, et seq.)  
amended by the Reclamation Safety of Dams Act Amendments of August 28, 1984 (Public Law  
98-404), October 27, 2000 (Public Law 106-377), and December 3, 2004 (Public Law 108-439);  
between the UNITED STATES OF AMERICA, hereinafter called the United States, acting  
through the Regional Director, Bureau of Reclamation, Pacific Northwest Region, the duly  
authorized representative of the Secretary of the Interior, hereinafter called the Contracting  
Officer, and the NEW YORK IRRIGATION DISTRICT, hereinafter called the District,  
organized and existing under and by virtue of the laws of the State of Idaho, having its principal  
place of business at Boise, Idaho.

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DEPARTMENT OF THE INTERIOR  
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WITNESSETH, THAT:

**Explanatory Recitals**

2. (a) WHEREAS, Deer Flat Dam, also known as Lake Lowell, was constructed by the United States as part of the Arrowrock Division, Boise Project; and
- (b) WHEREAS, the District and the United States entered into contracts dated September 27, 1926, August 7, 1941, and June 8, 1987, as amended, whereby the District assumed certain construction and operation and maintenance obligations to the United States; and
- (c) WHEREAS, the District and four other irrigation districts, represented by the Boise Project Board of Control, hereinafter referred to as the Board of Control, as provided in contracts executed in 1926 between the United States and the districts have assumed the responsibility to operate and maintain Deer Flat Dam as part of the transferred works; and
- (d) WHEREAS, investigations and studies by the Bureau of Reclamation have identified certain safety deficiencies at Deer Flat Dam; and
- (e) WHEREAS, failure of Deer Flat Dam could lead to downstream hazards, potential risk of loss of life, and loss of stored water and storage capacity; and
- (f) WHEREAS, the Bureau of Reclamation, in a "Safety of Dams Modification Report, Deer Flat Dams, Boise, Idaho, March 2007," proposes certain work to make the dam safe while providing full project benefits and protecting downstream property and lives; and
- (g) WHEREAS, the Act of November 2, 1978 (92 Stat 2471), as amended by the Act of August 28, 1984 (98 Stat. 2471), authorizes the Secretary of the Interior, through the Bureau of Reclamation, to perform Safety of Dams modifications. The Act and Reclamation

policy provide that 15 percent of the costs incurred for Safety of Dams modifications, excluding costs for cultural resource activities, shall be allocated to authorized purposes of the structure, and thus are reimbursable by the irrigation function, being the authorized purpose of the structure as represented by the five districts that constitute the Board of Control. Accordingly, the District as a member of the Board of Control, has an obligation to repay an appropriate share of the reimbursable cost of the corrective work; and

(h) WHEREAS, the qualified electors of the District have approved this contract pursuant to Idaho law.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations herein contained, it is mutually agreed by and between the parties hereto as follows:

### **Definitions**

3. The following terms, whenever used in this contract, shall have the following respective meanings:

"Safety of Dams Act" shall mean the Reclamation Safety of Dams Act of 1978 (Public Law 95-578; 43 U.S.C. § 506, *et seq.*) amended by the Reclamation Safety of Dams Act Amendments of August 28, 1984 (Public Law 98-404), October 27, 2000 (Public Law 106-377), and December 3, 2004 (Public Law 108-439).

"Safety of Dams Modifications" shall mean any work or modifications necessary to correct safety deficiencies on Deer Flat Dam as identified by the Contracting Officer.

"District's Repayment Obligation" shall mean the District's share, based on its assessed Project acreage, of the Total Reimbursable Cost for all five districts represented by the Board of Control to correct the deficiencies at Deer Flat Dam.

“Total Reimbursable Cost” shall mean 15 percent (0.15) of the total Safety of Dams Modifications cost, excluding costs for cultural resource activities, to correct the deficiencies at Deer Flat Dam, as provided in the Safety of Dams Act and Reclamation policy.

### **Contract Term and Scope**

4. This contract shall become effective upon the date of its execution on behalf of the United States, and its provisions shall remain in effect until the District has paid all amounts owed to the United States under this contract. This contract does not affect other contracts between the United States and the District unless the terms of those other contracts are contrary to the terms of this contract, in which case the terms of this contract shall prevail. This contract shall not be deemed a new or amended contract for the purposes of section 203(a) of the Reclamation Reform Act of 1982 (96 Stat. 1263 to 1274).

### **Work to be Performed**

5. (a) The United States intends to undertake the following work as may be further defined by the Contracting Officer:

(1) Remove and replace the entire Caldwell Canal conduit. Work will include installation of sheet piling through the existing emergency berm and dewatering wells in order to accomplish excavation of the dam embankment. The existing concrete structure will be demolished and removed. A new concrete outlet works structure will be constructed including a tower with trashracks, slide gates and access footbridge; a steel lined conduit, and downstream stilling basin. The embankment will be reconstructed with a filter and toe drain that will tie into the existing toe drain system. The sheetpiling, dewatering system and emergency berm will be removed. A bypass pipe will be installed to allow the District to provide irrigation deliveries during construction.

(2) Remove a 20-foot portion of the Nampa Canal for installation of a filter collar. Work will include excavation into the embankment at the downstream toe, removal of a 20-foot section of conduit, placement of a filter collar and toe drain that will tie into the existing toe drain system, replacing the conduit section in use, plugging one of the conduits, and providing permanent access to the three conduits not in operation.

(3) Provide public access to the Refuge Headquarters during construction. Work will include the construction of a new access road to the Refuge Headquarters. Through a service agreement with the U. S. Fish and Wildlife Service, the Service will pay for paving the new access road to make it permanent.

(4) Make any other necessary modifications as generally described in the "Safety of Dams Modification Report, Deer Flat Dams, Boise, Idaho, May 2007." Should it appear necessary or desirable to the Contracting Officer either before or during construction, these works may be modified in design or location, works may be eliminated, or other works may be added thereto, in keeping with the objectives of this contract. The Contracting Officer will notify the District, in advance, of any substantial change in modification requirements or work.

(b) The Contracting Officer shall determine and notify the District in writing when the work as described in this article is substantially completed or terminated as provided in Article 8 of this contract.

#### **Cost of Modifications and District's Repayment Obligation**

6. The total cost for Safety of Dams Modifications incurred by the United States, excluding costs for cultural resource activities, is estimated at nineteen million dollars (\$19,000,000). The Total Reimbursable Cost to all five districts constituting the Board of

Control is estimated at two million eight hundred and fifty thousand dollars (\$19,000,000 x 0.15 = \$2,850,000). The District's Repayment Obligation is the District's share of the Total Reimbursable Cost, and shall be 10.70 percent (0.1070) of the Total Reimbursable Cost. The District's Repayment Obligation is estimated to be three hundred and four thousand nine hundred and fifty dollars (\$2,850,000 x 0.1070 = \$304,950). This obligation may be adjusted under the provisions of Article 8 of this contract.

**Repayment of District Obligation--Annual Installments**

7. (a) The District's Repayment Obligation shall be repaid to the United States in successive annual installments within ten years, as such installments may be adjusted for the actual total Safety of Dams Modifications costs pursuant to Article 8 of this contract. Annual installments by the District shall be in the amount of \$33,345, except that the final installment shall not exceed the amount necessary to repay the District's Repayment Obligation.

(b) Provided, however, that in the event the actual final District's Repayment Obligation, as determined pursuant to Article 6, is different than three hundred and four thousand nine hundred and fifty dollars (\$304,950) the following conditions will apply:

(1) If the actual final District's Repayment Obligation is greater than three hundred and four thousand nine hundred and fifty dollars (\$304,950), the Contracting Officer will increase the amount of the final installment, in an amount not to exceed the same amount as the other installments, and will lengthen the repayment period if necessary. Provided, further, that in no event shall the repayment period exceed 50 years.

(2) If the actual final District's Repayment Obligation is less than three hundred and four thousand nine hundred and fifty dollars (\$304,950), the Contracting Officer

will decrease the amount of the final installment and will shorten the repayment period if necessary.

(c) The first of said annual installments shall be due and payable to the United States on December 31 of the year following the year that the Contracting Officer announces that the work is substantially completed as provided in Article 5 and on or before December 31 of each succeeding year thereafter until repaid in full. A lesser payment of the actual amount needed to retire the obligation will be allowed in the final year. Provided, that the District may, at any time, prepay all or a portion of the unpaid portion of the District's Repayment Obligation.

#### **Statement of Costs**

8. (a) Upon the completion of the work provided for in Article 5 or the termination of the work thereon as determined by the Contracting Officer for any reason, the Contracting Officer shall furnish the District with a written statement of the actual total Safety of Dams modification costs incurred by the United States and the District's share of the Total Reimbursable Costs which are payable to the United States, and such amount shall be referred to as the District's Repayment Obligation.

(b) The costs which make up the various obligations to be paid by the District to the United States under this contract shall embrace all expenditures of whatsoever nature or kind in discharge of the obligations undertaken pursuant to Article 5(a), including, but without limitation by reason of this enumeration, cost of surveys and investigations, labor, property, material and equipment, engineering, legal work, superintendence, administration, overhead, general inspection services, and claims of all kinds, whether or not involving the negligence of officers, agents, or employees of the United States. The Contracting Officer's determinations as

to what costs are properly chargeable under this contract, and as to the classification of those charges for repayment purposes, shall be conclusive.

**Title**

9. Title to the works and facilities constructed, repaired, or replaced pursuant to this contract shall be and remain in the United States.

**Operation and Maintenance of Project Works**

10. All irrigation facilities repaired or modified pursuant to this contract shall remain a part of the Boise Project, Arrowrock Division, and shall be operated by the Board of Control as set forth in the respective contracts executed in 1926, as amended and supplemented, between each of the five districts comprising the Board of Control and the United States providing for the transfer of operation and maintenance of certain facilities of the Arrowrock Division to the water users.

**Standard Provisions**

11. The Standard Provisions applicable to this contract are listed below. The full text of these articles is attached as Exhibit A and is hereby made a part of the contract.

- a. Charges for Delinquent Payments
- b. General Obligation—Benefits Conditioned Upon Payment
- c. Notices
- d. Contingent on Appropriations or Allotment of Funds
- e. Officials Not to Benefit
- f. Changes in District's Organization
- g. Books, Records, and Reports
- h. Medium for Transmitting Payments
- i. Contract Drafting Considerations

IN WITNESS WHEREOF, the parties hereto have signed their names as of the day and year first above written.

THE UNITED STATES OF AMERICA

By J. William McDonald  
Regional Director, PN Region  
Bureau of Reclamation  
1150 North Curtis Road, Suite 100  
Boise, ID 83706-1234

(SEAL)

ATTEST:

Vette Harwood  
Secretary, New York Irrigation District

NEW YORK IRRIGATION DISTRICT

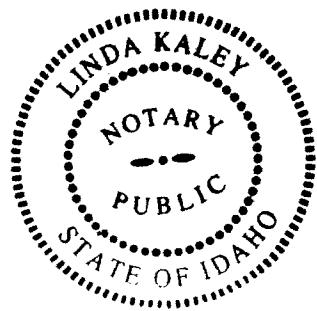
By B. J. Harwood  
President

STATE OF IDAHO )  
: ss  
County of Ada )

On this 11 day of January, 2008, personally appeared before me  
J William McDonald, to me known to be the official of the United States of  
America that executed the within and foregoing instrument and acknowledged said instrument to  
be the free and voluntary act and deed of said United States, for the uses and purposes therein  
mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal  
as of the day and year first above written.

(SEAL)



Linda Kaley  
Notary Public in and for the  
State of Idaho  
Residing at: Meridian ID

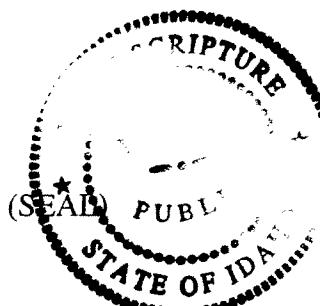
My commission expires: 6/02/2012

\* \* \* \* \*

STATE OF IDAHO )  
:ss  
County of Ada)

On this 13th day of December, 2007, before me,  
John Scripture, a Notary Public, personally appeared Brian McDevitt and  
Delta Harwood, known to me to be, respectively, the President and Secretary, of the  
NEW YORK IRRIGATION DISTRICT, and the persons who executed the within instrument and  
acknowledged to me that the NEW YORK IRRIGATION DISTRICT executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal  
as of the day and year first above written.



John Scripture  
Notary Public in and for the  
State of Idaho  
Residing at: Weiser, Idaho  
My commission expires: 8-20-12

**EXHIBIT A**

**STANDARD PROVISIONS**

The District, as referred to in the following Standard Provisions, shall be the New York Irrigation District.

**CHARGES FOR DELINQUENT PAYMENTS**

a. (1) The District shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the District shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, in addition to the interest charge, the District shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, in addition to the interest and administrative charges, the District shall pay a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The District shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(2) The interest charge rate shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month. The interest charge rate will be determined as of the due date and remain fixed for the duration of the delinquent period.

(3) When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

**GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT**

b. (1) The obligation of the District to pay the United States as provided in this contract is a general obligation of the District notwithstanding the manner in which the obligation may be distributed among the District's landowners and notwithstanding the default of individual landowners in their obligation to the District.

(2) The United States shall not make water available to the District through Boise Project facilities during any period in which the District is in arrears for more than 12 months in the payment of charges under this contract due the United States.

## NOTICES

c. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the District, when mailed, postage prepaid, or delivered to the Regional Director, PN Region, Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706 1234, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Secretary, New York Irrigation District, 6616 Overland Road, Boise, Idaho 83709. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

## CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

d. The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the District from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

## OFFICIALS NOT TO BENEFIT

e. No Member of or Delegate to the Congress, Resident Commissioner or official of the District shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

## CHANGES IN DISTRICT'S ORGANIZATION

f. While this contract is in effect, no change may be made in the District's organization, by dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

## BOOKS, RECORDS, AND REPORTS

g. The District shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the District's financial transactions. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

### MEDIUM FOR TRANSMITTING PAYMENTS

h. (1) All payments from the District to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

(2) Upon execution of the contract, the District shall furnish the Contracting Officer with the District's taxpayer's identification number (TIN). The purpose for requiring the District's TIN is for collecting and reporting any delinquent amounts arising out of the District's relationship with the United States.

### CONTRACT DRAFTING CONSIDERATIONS

i. Articles 1 through 11 of this contract have been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this contract pertains, and no one party shall be considered to have drafted the stated articles.